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ABSTRACT

Providing legal perspectives on multiculturalism, this curriculum guide assists lawyers making classroom presentations and teachers at all levels. This booklet contains lesson plans and ancillary materials on the topic of "Diversity and the Law," for three different levels of students: elementary grades 4-6 (Level A), middle school grades 6-8 (Level B), and high school grades 9-12 (Level C). The level is identified near the page number. Additionally, each grade level contains pages for the lawyer (marked by the scales of justice), the teacher (an apple), and the student (a pencil). At the beginning of each level a chart of materials is provided, along with photocopying instructions. Overhead transparencies can be made of the main activity pages (marked by all three icons). The elementary school curriculum provides students with a working knowledge of the concepts of majority and minority status and the application of this knowledge to legal issues. Students learn that majority status changes with different situations and that individuals sometimes become members of a group by choice and sometimes by circumstance. The lesson thus introduces the concept of diversity. After students name groups of people they think should be legally protected, the lesson outlines groups that are protected by law and the protections they are given. Finally, students discuss the importance of protecting minority rights. The secondary school curriculum focuses on attempts to desegregate U.S. society, specifically in public education, as well as efforts to segregate schools to benefit certain groups. Students first examine the increasing diversity of the U.S. population and the development of governmental acknowledgment of diversity. They then examine U.S. Supreme Court decisions and legislative acts defining the constitutionality of classifying students in public schools. They conclude by evaluating proposals to segregate students to "benefit" certain groups ("group-exclusive public schools"). In addition to lesson plans, the booklet contains transparency masters, instructions for a student forum, suggested activities for teachers after the lawyer's visit, puzzles, and other exercises for students. (LH)

$18.00

LAWYERS IN THE CLASSROOM

Diversity and the Law

by Gayle Mertz

ED 393 713

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Special Committee on Youth Education for Citizenship

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When You're a Lawyer in the Classroom . . .

You may find the following tips helpful, especially if you're a novice at giving classroom presentations:

- Work with the teacher before your session. Let her or him know what you plan to do and provide background materials. Ask what the class has been studying, and integrate your session with classroom studies.

- The first few minutes of a presentation may make or break it. Get the students involved immediately—either with a startling statement that grabs their attention or a question that they can't help but want to answer.

- Talk with the students, not at them. A lecture may work for a professor in a law class, but it is not the best way to approach elementary or even secondary students.

- Work the room. Don't stand in one place; move around. Get the students involved. Encourage participation by your own enthusiasm for the topic.

- Be prepared to vary from your lesson plan a bit. When you do generate interest and enthusiasm in the students, their questions and comments may lead you away from your plan. Encourage students' input and allow digression, but look for an opening to get back on track as soon as you can.

- Talk to the students in language they can understand, but don't feel you need to talk down to them. Use some jargon, but explain what each term means. And use examples from students' experiences and analogies they can relate to.

- Know your subject. But if asked a question that you cannot answer, don't try to hide the fact from the students. Say, "That's a good question. I don't know the answer to it."

- Be in control of the classroom. Some students may try to test you. If that happens, the teacher may intervene; then again, he or she may not. Try to handle the situation yourself. Let the students know you are in control of the classroom for the time you are there.

- Don't get involved in discussion of a school controversy, especially one that pits students against the administration. Stress responsibility as well as rights when talking about the law.

- Watch the clock. No matter how interesting you may be, most students' attention will still last no longer than the normal classroom period.

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How to Use This Booklet

This booklet contains lesson plans and ancillary materials on the topic of Diversity and the Law for three different levels of students: elementary grades 4–6 (Level A), middle school grades 6–8 (Level B), and high school grades 9–12 (Level C). The grade level is identified near the page number. In addition, each grade level contains pages for the lawyer (marked by the scales of justice), the teacher (an apple), and the students (a pencil). At the beginning of each level, you'll find a chart of the materials it comprises, along with photocopying instructions. You might also want to make overhead transparencies of the main activity pages (marked by all three icons).

SPECIAL COMMITTEE ON
Youth Education for Citizenship
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Diversity and the Law

Level A (Grades 4–6)

This level contains the following materials:

Lawyer's Pages

- ❑ **Lesson Plan** (pages A-4–5)
- ❑ **Background on the Law** (page A-6)

Teacher's Pages

Make one copy of each page marked with the teacher's icon, and send the copy to the teacher in a Teacher's Packet one week before the class session.

- ❑ **Background on the Law** (page A-6)
- ❑ **Activity Guide** (page A-7)
  Overview of the Lesson
  Activity Sheet/Answer Keys
  Extension Activities (Bulletin Board, School Rules)

Student Pages

Make copies of the pages marked with the student icon for each student in class, and distribute as part of a Student Packet.

- ❑ **Survey** (page A-8)
- ❑ **Activity Sheet** (page A-9)

Objectives

During your session, students will—

- ✓ attain a working knowledge of the concepts of minority and majority status
- ✓ apply their knowledge of minority and majority status to law-related concepts

Vocabulary

As these terms come up in discussion, list them on the board and elicit definitions from the students. Help the class define the terms, if necessary. These terms appear on the Activity Sheet in the Student Packet, which students may complete after your visit.

majority	disability
minority	racial
diversity	ethnic

Materials Needed

- ✓ several newspapers and magazines (see step 1 under Procedure below)
- ✓ copies of the church listings in the Yellow Pages of your local phone book for half the students in the class *and*
- ✓ copies of the restaurant listings in the Yellow Pages of your local phone book for half the students in the class
  OR
- ✓ a local phone book for each group of four or five students in the class

Procedure

1. Introduce the words and concepts *majority* and *minority*. Bring several magazines and newspapers to class with you. Display these items, along with an assortment of books from the classroom, so that all students can see them. Make sure it is obvious that the books greatly outnumber the other items. Explain that people routinely read books, newspapers, and magazines. Ask which item represents the majority of reading materials in the display. Use the same example to demonstrate what a minority is. Discuss how the availability, or the presence, of more or fewer items may influence how comfortable with an item people feel (that is, if newspapers are in short supply, or not readily available, people may become more comfortable reading books or magazines or even not reading at all).

2. Ask students to look around the room to identify a majority or a minority of items present. Give examples to get them started if necessary (for example, the majority of the windows have the blinds closed, and the minority have the blinds open; the majority of the furniture consists of desks, with one minority being tables; the majority of the books on the shelf are yellow, and a minority of books are blue). Focus on the concepts numerically. Do not apply the concepts to social or political issues at this time.

3. Explain to students that often majority or minority status changes with different situations (for example, the classroom next door may have a majority of blinds open or a majority of red books). Solicit additional examples from the class.

4. Explain to students that one way of identifying majority or minority status is to conduct a survey in which you count items within a certain grouping to determine which type is a majority and which types are minorities. Tell students that they are going to conduct such a survey.

5. Divide the class into groups of four or five students. Distribute the Yellow Pages church listings to half the groups and the restaurant listings to the other half. OR Distribute a phone book to each group and direct half the groups to the church listings and the other half to the restaurant listings.

6. Explain to students that each group is going to survey the listings to determine which churches or restaurants represent a majority and which represent minorities. Ask them to create a simple chart with classifications at the top and to place a single mark under the heading to represent each listing that fits in that classification. Draw an example for them with classifications that will easily be found in your local phone book. (See the chart on this page.)

Students will probably not have the necessary background or information to complete this task with complete accuracy. Encourage them to venture an educated guess when classifying the listings or to skip listings that they do not understand. Correct answers are not so important as the process in this activity.

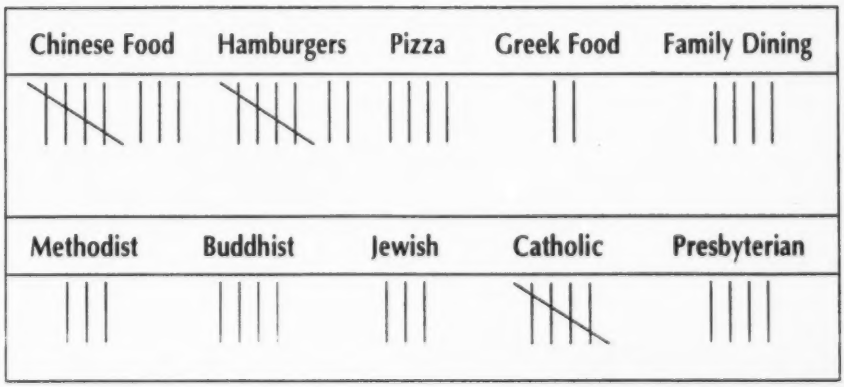
Depending on the size of your local phone book and the length of time available, you may want to omit some of the pages. If so, be sure not to distort the variety of churches or restaurants.

7. Instruct each group to determine which of its classifications is a majority and which are minorities.

8. Ask a spokesperson from each group to report its findings to the entire class.

9. Discuss what students observed from this exercise. Use the term *diversity* to describe the various churches and restaurants.

10. Explain to students that diversity often makes decision making difficult and complicates our lives. Suggest that life might be less complicated and decision making easier if all restaurants served the same food and all churches followed the same religious practices.



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The Fourteenth Amendment provides that no state shall deny to any person equal protection under law. To determine whether a law or government practice violates this equal protection clause, courts use three different tests, depending upon the nature of the minority group involved:

Strict Scrutiny Test: Applies to laws and practices that discriminate against minorities on the basis of race, national origin, or alien status. As the test suggests, the government action is examined closely. The government must show that it has a compelling interest, in other words, an extremely important reason, for treating people who fall within one of these classifications, differently. It must also show that this governmental action is the least restrictive means to achieve the compelling interest.

Substantial Relationship Test: This level of scrutiny, which is less demanding than strict scrutiny, applies to government action that classifies on the basis of sex. In these cases, the government must show an important reason to justify its classification. There must be a close relationship between the government action and its purpose.

Rational Relationship Test: Beyond the two tests above, in most cases of unequal treatment, government action that classifies one group differently from another receives minimal judicial scrutiny. There must be a logical relationship between the classification and the practical purpose of the law. The government's interest in discriminating must be a legitimate one.

Selected Major Federal Civil Rights Laws

The Civil Rights Act of 1964, amended in 1972, prohibits discrimination in public accommodations against minorities based on race, color, religion, or national origin.

The Age Discrimination in Employment Act of 1967, amended in 1978, prohibits arbitrary age discrimination of persons aged 40 and older by employers of 20 or more persons.

The Americans with Disabilities Act of 1990 prohibits discrimination against individuals with disabilities in employment, public services, public accommodations, telecommunications, and other activities.

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Then people would not have to make so many decisions. It would eliminate conflict within families or groups of friends about which restaurant to go to. Church services would be more alike, and people would have more in common if they worshiped in the same way.

11. Pose to the class this hypothetical situation: The local government is going to require all restaurants to serve the type of menu that is now served at the majority of restaurants in their community, based on the class's survey. It will also require that all churches adopt the religion that their survey found represented the majority in the community. Discuss the advantages and disadvantages of a law that would eliminate diversity in restaurants and religious services.

12. If students have not yet brought up the concept on their own, explain that the terms *majority* and *minority* are often applied to groups of people. With the students, create two lists on the board of minority and majority groups. Push the students to think of as many groups as possible and to go beyond obvious racial and ethnic groups (for example, bowlers, gardeners, carpenters, voters, vegetarians, and so on). After several minutes of compiling the lists, explain to students that we sometimes become members of groups by choice, or voluntarily, and sometimes just by circumstance. (For example, you could say, "I choose to be a bowler. I happened to be born into a large family, therefore I am a sister [or brother].") With input from students, mark a **V** (voluntary) or a **C** (circumstance) next to each word in the majority and minority lists. (See the sample chart on this page.)

13. Distribute copies of the Student Packet. Direct students to the survey in their packet. Ask students to fill out the forms but not to put their names on the survey so that their privacy will not be invaded. Allow about five minutes for filling out the forms. Encourage students to work quickly, and assure them that there are no right or wrong answers. Then collect the surveys.

14. Quickly review the responses on the surveys, and add additional classifications from them to the master lists on the board. Emphasize the fact that, in different ways, we each belong to majority and minority groups.

15. Explain to students that in this country we have numerous laws that protect the rights of people who belong to minority groups. A person's membership in the group may be voluntary, involuntary, or a matter of circumstance. Ask students to name groups of people who they think should be protected from unfair treatment based on their minority status. List the groups on the board. Once the list is completed, tell students which minority groups are in fact protected by law and what type of protection they are given (see "Background on the Law," which follows). If necessary, explain why some of the groups they listed are not considered legal minorities. If the students' list omits important groups, add them to the list. Important classifications to include are below. Depending on the maturity level of students, you may wish to include this classification: gays, lesbians, or bisexuals.

people with disabilities
racial minorities
ethnic minorities
religious minorities
Native Americans
age (protected in some situations)
sex (protected in some situations)
people who promote unpopular (minority) *ideas or values*

16. Discuss with students why the government protects minority rights and does not need to protect rights of the majority because majorities already have power.

Majority		***Minority***	
girls	C	birdwatchers	V
Protestants	C	Indians	C
baseball players	V	redheads	C
students	C	dropouts	V
TV viewers	V		

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Activity Guide

OVERVIEW OF THE LESSON

Objectives

During the lawyer's class session, students will—

- ✓ attain a working knowledge of the concepts of minority and majority status
- ✓ apply their knowledge of minority and majority status to law-related concepts

Lesson Summary

The class session conducted by the lawyer focuses on the concepts of majority and minority—first as they refer to things, then as they refer to people in our society, and finally as they apply to legal doctrine. Students will work in small groups to classify either local churches or restaurants as listed in the Yellow Pages, and then determine which are majorities and which are minorities. Following the small group work, the lawyer debriefs the students' findings and discusses the concept of diversity. Students then list majority and minority groups in society, identify membership in them as by choice or by circumstance, and learn which minorities are protected by law.

Following the lawyer's visit, you might have students create a bulletin board on the topic of diversity. You might also consider having students write rules for their class and school to protect minority rights. These extension activities are explained more fully below.

ACTIVITY SHEET/ANSWER KEYS

In the Student Packet is an Activity Sheet with a scrambled word and classification exercise. Students may use the exercise to strengthen their grasp of concepts after the lawyer's visit. Following are the answers to the exercise:

Unscrambled Words

minority
religious
ethnic
age
racial
diversity
majority
sex
disability

Protected Minorities

religious
ethnic
age
racial
sex
disability

EXTENSION ACTIVITIES

Bulletin Board: Create a classroom bulletin board with student drawings and magazine pictures illustrating different majority or minority groups in your school or community.

School Rules: Invite students to write rules for their classroom or school that are designed to protect the rights of minorities. Then have the class discuss, debate, and vote on passage of the rules.

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Survey

Complete each statement below as best you can.

majority the greater part or larger number; more than half the total
minority the lesser part or smaller number; less than half the total

1. A minority group that I belong to is

2. A minority group that my family belongs to is

3. A majority group that I belong to is

4. A majority group that my family belongs to is

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Activity Sheet

Word Scramble

In the column on the left are scrambled words. The words have to do with our nation's diversity. Unscramble the words and write them in the middle column. If a word describes a minority group that is protected by law, also write it in the column on the right. You can choose from the list of words at the bottom of this page if you'd like.

Scrambled Words	Unscrambled Words	Protected Minorities
ormniyit	_____	_____
rilgousei	_____	_____
nichet	_____	_____
gae	_____	_____
carail	_____	_____
vdiyersti	_____	_____
ormjayit	_____	
xes	_____	
dabilistiy	_____	

Word List

diversity	racial	sex
disability	religious	age
minority	majority	ethnic

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Diversity and the Law

Level B (Grades 6–8)

This level contains the following materials:

Lawyer's Pages

- ❑ **Lesson Plan** (page B-11)
- ❑ **Background on the Law** (page B-12)
- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages B-13–15)
- ❑ **Separate But Equal: A Future Look?** (page B-16)

Teacher's Pages

Make one copy of each page marked with the teacher's icon, and send to the teacher in a Teacher's Packet one week before the class session.

- ❑ **Background on the Law** (page B-12)
- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages B-13–15)
- ❑ **Separate But Equal: A Future Look?** (page B-16)
- ❑ **Activity Guide** (page B-17)
  Overview of the Lesson
  Activity Sheet/Answer Key
  Extension Activities (Drafting a Proposed Bill, Mock Public Hearing)

Student Pages

Make copies of the pages marked with the student icon for each student in class, and distribute as part of a Student Packet.

- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages B-13–15)
- ❑ **Separate But Equal: A Future Look?** (page B-16)
- ❑ **Activity Sheet** (page B-18)

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Lesson Plan

Objectives

During your session, students will—

- ✓ identify court decisions and legislative acts that define the constitutionality of classifying students for enrollment in public schools
- ✓ identify arguments for and against the existence of group-exclusive public schools
- ✓ apply legal and political history in evaluating a mock bill seeking to remedy unequal educational opportunity

Vocabulary

As these terms come up in discussion, list them on the board and elicit definitions from the students. Guide them toward adequate definitions, if necessary. These terms are used on the Activity Sheet in the Student Packet, which students may complete after your visit.

Brown v. Board of Education of Topeka
constitutional
diversity
due process
equal protection
ethnic
Jim Crow laws
minority
Plessy v. Ferguson
protected class
segregation
separate but equal

Procedure

1. Note: Before the class session, acquaint yourself with the document, "The Constitution, the Census, and Diversity" on page B-12. Ask students to name ancestries represented in this country, and create a list of their responses on the board. After a minute or two, ask the class how many different ancestries they think there are in the U.S. population.

2. After several guesses, point out that in the 1990 census, people could write in their ancestral origins, which were then assigned codes—and about 1,000 code numbers existed!

3. Explain to students that the diversity of the U.S. population was not always officially acknowledged. In the first national census taken, in 1790, officials did the classifying, not the people themselves. After observing the people in each household, officials were to use their judgment in recording a population count using the following classifications (jot these down on the board):

- **a.** free white males over sixteen years of age
- **b.** free white males under sixteen
- **c.** free white females
- **d.** other persons
- **e.** slaves

4. Compare this list with the class's list of ethnic identities.

5. Ask students what effect they think the increasing diversity of the population—and people's attitudes toward diversity and their own heritage—have had on the country. After a few minutes of discussion, tell students that they are going to examine one institution that has been altered as the diversity of the nation has increased—public school education.

6. Distribute the Student Packets to the class.

7. Divide the class into four groups. Direct students to look at the handout "Separate But Equal: A Historical Look at Segregation," Sections 1–4. Ask the members of each group to read one section, discuss it among themselves, and prepare to present a brief summary of the material to the entire class. Allow five to ten minutes for this activity.

8. In sequence, ask a member of each group to summarize for the rest of the class the information in its section.

9. Summarize with the class the measures taken to desegregate education that were described in Sections 1–4. Write this summary on the board or on an overhead transparency.

10. Ask students to read Section 5 of the handout. Then discuss with them the fact that some people support a different form of segregation. This approach would place students in learning environments with students who are similar to them in order to help the students achieve academically. The argument goes that students would be more comfortable, teaching techniques that best meet their needs could be selected more easily, and school conflicts among students of different groups would be reduced.

11. Direct students to the handout "Separate But Equal: A Future Look?" in their packets.

12. Give the student groups a few minutes to review their summary and the mock proposed legislation. Ask the groups to discuss among themselves how they think the legal decisions they have learned about would apply to the mock proposed legislation. In other words, would the Supreme Court approve such a law? Would it be fair?

13. Facilitate a class discussion based on the groups' analysis.

14. Conclude with a class vote (by a raise of hands) to tally how many students would or would not support the mock legislation themselves.

Jim Crow Laws

Jim Crow refers to practices, institutions, and statutes that result from or foster segregation of African Americans from white Americans. The term comes from an African-American character in a popular song from the 1830s, and it came into common use in the 1880s when racial segregation became legal in many parts of the South.

First developed in the northern states and later adopted by the South, *Jim Crow laws* refers to statutes that required racial separation in many public places. These included public schools; recreational, sleeping, and eating facilities; public vehicles; even telephone booths. Jim Crow laws also deprived African Americans of their voting rights.

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As the United States has grown, the variety of people considered part of this nation has also grown. The population of the United States today is vastly different from the population of the original thirteen colonies, and the ways in which we chronicle and consider those various individual human beings has also changed radically.

Article I, Section II, of the U.S. Constitution requires a census to be conducted every ten years. When the Constitution was ratified, the law called for a count of "... free Persons ... excluding Indians not taxed, [and] three fifths of all other Persons."

In March 1790, after President George Washington signed the first census act, Secretary of State Thomas Jefferson instructed U.S. marshals throughout the nation to take the census. This count was intended to assist in apportioning federal taxation and representation. Marshals were instructed to observe the people from each household and then record their numbers using the following classifications:

1. free white males over sixteen years of
2. free white males under sixteen
3. free white females
4. other persons
5. slaves

The U.S. Census has always included a question about race. Whites have always been distinguished from nonwhites. However, the census moved very slowly in creating classifications that would distinguish groups of nonwhites from one another. For example, in 1850, instructions to census workers read: "In all cases where the person is white, leave the space blank; in all cases where the person is black, insert the letter B: if mulatto insert M. It is very desirable that these particulars be carefully regarded."

It wasn't until 1900 that three additional classifications were added: Chinese, Japanese, and Indian. The move to include Indians was not without some peculiar instructions: "Every family composed mainly of Indians should be reported *entirely* [as Indians], and every family composed mainly of persons not Indian should be reported *entirely* [in] the general population."

The census was moving toward a policy of considering a person's social affiliations in determining his or her race. Consider the instructions given to census takers in 1930: A person of mixed "White" and "Negro" blood was to be counted as a "Negro," no matter how small the percentage of African-American blood; someone part "Indian" and part "Negro" also was to be listed as "Negro," unless the Native-American blood predominated and the person was generally accepted as a Native American in the community. A person of mixed "White" and "Indian" blood was to be counted as an "Indian" unless regarded as white in the community. Let's not forget that it was the census taker who was making this determination, not the respondent.

In 1970, respondents were asked to self-identify their ethnicity. Responses clearly revealed that citizens did not place themselves into a few neat categories. Census workers, however, were given instructions for interpreting the wide variety of responses. For example, "Chicano," "La Raza," "Mexican American," "Moslem," or "Brown" were to be changed to "White," while "Brown (Negro)" would be considered as "Negro" or "Black" for census purposes.

In the most recent (1990) census, respondents were given the opportunity to write in their ancestry. In fact, each person enumerated in the census could list two ancestry identities. Census workers then assigned each listed ancestry a code number from a list of almost 1,000 ancestry codes. The codes ranged from 001 (Alsatian) to 994 (North American).

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Separate But Equal:
A Historical Look at Segregation

Section 1

About 100 years ago, the Supreme Court decided a case called *Plessy v. Ferguson,* 163 U.S. 537 (1896). This case started a debate about whether people should consider someone's race when providing government services. That debate continues today.

In *Plessy,* the Supreme Court ruled on the practice of keeping people of different races separated on public transportation. According to the Court, such segregation did not violate the Fourteenth Amendment of the Constitution as long as equal facilities were provided for each race. (The Fourteenth Amendment forbids taking away a person's rights without "due process" of law. It also demands equal protection of the laws for all persons.) In other words, the Court ruled that segregation was constitutional in certain circumstances. It established a separate but equal rule, or doctrine.

Racial segregation was common at the time in both law and everyday practice. The majority of the Supreme Court justices claimed that segregation benefited both races and that it was not harmful. In a series of cases beginning in 1898, the Court extended the separate but equal rule to include public education.

Schools for African Americans were underfunded, poorly maintained, and located long distances from many black students' homes (white students were frequently provided school buses; black students were not). Even so, the courts routinely ruled that these separate schools were "equal" and therefore constitutional.

Section 2

Before the 1930s, students were often segregated by race in separate public schools. This practice was ruled constitutional by the Supreme Court in 1896 when it established the separate but equal rule. Beginning in 1930, the National Association for the Advancement of Colored People (NAACP) brought lawsuits in state and federal courts. These suits challenged racial segregation in education as well as public accommodations (such as restrooms). The goal of the NAACP was to abolish the so-called Jim Crow laws, which required such segregation. In this way, the NAACP hoped to improve public education for African Americans. Time and again, the separate but equal rule established by the Supreme Court helped defeat the NAACP.

However, in the 1940s, during World War II and after, the Supreme Court began to focus its attention on hardships imposed on racial minorities. In *Hirabayashi v. U.S.,* 320 U.S. 81 (1943); *Korematsu v. U.S.,* 323 U.S. 214 (1944); *Oyama v. California,* 332 U.S. 633 (1948); and *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948), the Court ruled that states could not place special disabilities on people of Asian descent. The Court also reduced some racial restrictions in housing, public accommodations, public education, and commerce. For example, in 1946 the Court ruled in *Morgan v. Virginia,* 328 U.S. 373, that a Virginia Jim Crow law requiring racial segregation on interstate buses was unconstitutional.

In 1948, the efforts of the NAACP were assisted when the U.S. attorney general became involved in the case *Shelley v. Kraemer,* 334 U.S. 1. In this case, the Court ruled that racially restrictive covenants were unconstitutional. Such covenants prohibited the sale of housing to people because of their racial or ethnic ancestry. The involvement of the nation's attorney general in a case involving race signaled a dramatic change in the way people were thinking about race, diversity, and discrimination.

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Section 3

Before the 1930s, students were most often segregated by race in separate schools. This practice was ruled constitutional by the Supreme Court in 1896 when it established the separate but equal rule. And even though the Court chipped away at this rule from 1930 to 1950, it was not until 1954 that separate but equal was dramatically upended. In that year, the Supreme Court issued its opinion in the landmark case *Brown v. Board of Education of Topeka,* 347 U.S. 483.

Brown was brought to the Court by the National Association for the Advancement of Colored People (NAACP). At the time the *Brown* case was filed, the Court was holding other cases from other states. All the cases were seeking an end to racially segregated public schools. Under the leadership of the newly appointed Chief Justice Earl Warren, the Court combined several of these cases into the *Brown* case. Therefore, the *Brown* decision would affect millions of schoolchildren in over a dozen states.

Chief Justice Warren wrote the Court's opinion in *Brown.* He purposely avoided the use of technical style and language. Instead, he wrote an opinion that was short, clear, and nonaccusing. He wrote that segregation and the rule of separate but equal were unconstitutional. He wrote of the harmful effects of racial segregation on the minority student. Asking and answering his own questions, Warren wrote: "Does segregation of children in public schools solely on the basis of race ... deprive the children of the minority group of equal educational opportunities? We believe that it does."

Section 4

In the past, some students were denied admission to public schools because of their race. Yet the practice of excluding students has not been limited to racial discrimination. Congress and the courts have defined the educational rights of other groups of students:

Sex: In the late 1960s and early 1970s, Congress examined the unequal educational opportunities available to males and females. As a result, Congress passed a law, Title IX, that prohibits discrimination on the basis of sex in education programs and activities that receive federal money.

In the 1973 case *Brenden v. Independent School District 742,* 477 F.2d 1292, a federal court of appeals ruled that the Fourteenth Amendment to the Constitution is violated when a school neglects to provide noncontact sports teams for girls if it provides teams for boys in the same sports. (The Fourteenth Amendment guarantees equal protection of the laws for all persons.)

The economically disadvantaged: The 1973 Supreme Court case *San Antonio School District v. Rodriguez,* 411 U.S. 1, reviewed school funding that resulted in wealthier districts providing more money for education than poorer districts. Parents of children in economically disadvantaged districts claimed that their children were the victims of discrimination because they received a lower quality of education. The Supreme Court ruled that the Constitution does not bar discrimination based on the amount of money a person has. In that way, a person's social and economic class is not unlike his or her race or sex.

People with disabilities: In 1975, Congress passed the Education for All Handicapped Children Act. The title of the act has since been changed to the Education of Individuals with Disabilities Act. The act sets aside federal money to meet the educational needs of disabled children. Before this law was enacted, schools commonly excluded disabled children or provided them with inadequate educational opportunities.

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Section 5

For the past 100 years, there has been a movement to uphold the rights of students from certain groups to be *included* in public education. However, a limited movement also exists to create newly segregated schools. This segregation is being promoted as helping students.

For example, in 1991, the Detroit public schools tried to create academies that would be limited to African-American male students. The district pointed to the crisis facing black males (they face high rates of murder, unemployment, and dropping out of school). It planned new schools that would isolate and support this high-risk group.

However, in 1982, the Supreme Court had ruled that a public university in Mississippi could not exclude one sex. A federal district court in Michigan relied on that ruling to decide against the Detroit black-male academies. According to the court, the Detroit school district failed to show that the high murder, unemployment, and dropout rates among African-American males would be lowered if females were excluded from the academies. The court also said that the district failed to show that the presence of female students is responsible for these problems.

In a more recent case (1994), the Supreme Court rejected a plan to establish a special school district for disabled Hasidic Jewish children. In *Board of Education of Kiryas Joel Village School District v. Grumet,* 114 S. Ct. 2481 (1994), the Court ruled that the New York law establishing the district violated the First Amendment of the Constitution, which calls for the separation of church and state.

Control Patterns

Majorities most often control the relationships among the groups in their societies. Here are three major patterns:

Assimilation The majority group accepts one or more minority groups into society, so that they become assimilated. In *structural assimilation,* the minorities are accepted partially or entirely into friendship and economic relationships, such as clubs and businesses. For example, American Catholics and Jews are assimilated, yet preserve their religions in a predominantly Protestant society. In *cultural assimilation,* the minority adopts the majority's culture over time and may lose many cultural characteristics. For example, Swedes, Norwegians, and Danes have given up much of their ethnic heritage while assimilating into American society.

Racial or ethnic stratification Sometimes, groups are layered, or *stratified,* by race or ethnicity, with minorities given low social and economic positions. Until accepted into the mainstream, these groups may suffer from poverty, discrimination, and segregation. For example, British Americans and other groups who arrived in America prior to African Americans assigned them to positions of slavery.

Internal colonialism Sometimes, political and economic equality come slowly or never. All over the world, women have been denied educational, political, and economic equality for thousands of years.

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The following situations have been offered as ways to use segregated public education to help students learn:

1. Research shows that girls do better in math and science classes when there are no boys in the class to compete with them. Therefore, some people believe that girls should be taught these subjects in all-girl classes.

2. Non-English-speaking students are sometimes taunted and ridiculed by English-speaking students in many schools. In order to allow these students to learn free from harassment, some people believe that the students should attend their own schools.

3. Some high-achieving students excel in certain subjects, yet they cannot learn so quickly or so well as they might because they are in the same class as diverse students. Therefore, some people believe especially bright children should be placed in special schools with adequate resources to challenge them fully.

4. Students of a religious minority dress differently from most students because of their religion. They do not want to attend school with students who do not accept their religion and who will not tolerate the different kind of clothing. The minority students feel they have a right to attend a public school where their religious and moral standards are upheld and supported.

5. In many areas where Hispanic students are a minority, their dropout rates are very high. These students say that they are uncomfortable in school because they feel their culture is not acknowledged or respected. Schools that serve only Hispanic students have been suggested to help solve the problem.

Read the suggested law below. It represents some people's feeling that our schools should be changed to better meet the needs of students in the 1990s. What do you think?

> Members of boards of education should determine what type of school environment best suits the needs of their diverse students. To best serve the educational, cultural, religious, and social interests of their students they may, by a simple majority vote, set policies that would place individual students in specific schools based on each student's needs. These needs will be determined by the student's race, ethnic background, religion, sex, and intelligence, and an assessment by a professional educator.

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Activity Guide

OVERVIEW OF THE LESSON

Objectives

During the lawyer's class session, students will—

- ✓ identify court decisions and legislative acts that define the constitutionality of classifying students for enrollment in public schools
- ✓ identify arguments for and against the existence of group-exclusive public schools
- ✓ apply legal and political history in evaluating a mock bill seeking to remedy unequal educational opportunity

Lesson Summary

The lesson conducted by the lawyer focuses on attempts to desegregate U.S. society, specifically in public education, as well as efforts to resegregate schools to benefit certain groups. Students first discover the increasing diversity of the population and our increasing emphasis on ethnic identity, as evidenced by the U.S. Census. Working in small groups, they then examine Supreme Court decisions that allow for greater inclusion and integration of identified groups in public educational systems. Finally, the class investigates a move toward segregating students to "benefit" certain groups and evaluates the constitutionality of a mock proposed law with this goal.

Following the lawyer's lesson, you might have students draft their own mock laws regarding segregated schools to best serve diverse groups of students. Additionally, consider holding a mock public hearing on the move to create segregated or "special" schools for certain groups. These extension activities are explained in greater detail below.

ACTIVITY SHEET/ANSWER KEY

In the Student Packet is a puzzle activity that asks students to work with key vocabulary terms. Students may use the activity to strengthen vocabulary after the lawyer's visit. The correct answers follow:

1. due process
2. Jim Crow law
3. *Brown v. Board of Education*
4. equal protection
5. segregation
6. *Plessy v. Ferguson*
7. constitutional
8. separate but equal
9. minority

Word in circles: diversity

EXTENSION ACTIVITIES

Drafting a Proposed Bill: Ask students to draft their own legislation to address the issue of creating schools that benefit certain groups. They may do so individually or in groups, and then debate the merits of their bills as lawmakers would do on the floor of the legislature.

Mock Public Hearing: Conduct a mock public hearing on the proposed legislation to allow for "special" schools. Different students may represent the positions of different individuals. Suggested representatives:

- a famous female scientist
- a male math professor from a local college
- a member of the NAACP
- a member of the clergy from a majority religion
- a member of the clergy from a small religious group that wants its own schools
- a representative of the Latin American Refugee Assistance Society

Divide the class into small groups, and have each group prepare one of the viewpoints and choose a representative to present it. Ask a volunteer to act as moderator and introduce each representative. At the end of all the presentations, the class may vote on whether to accept, reject, or modify the proposed bill.

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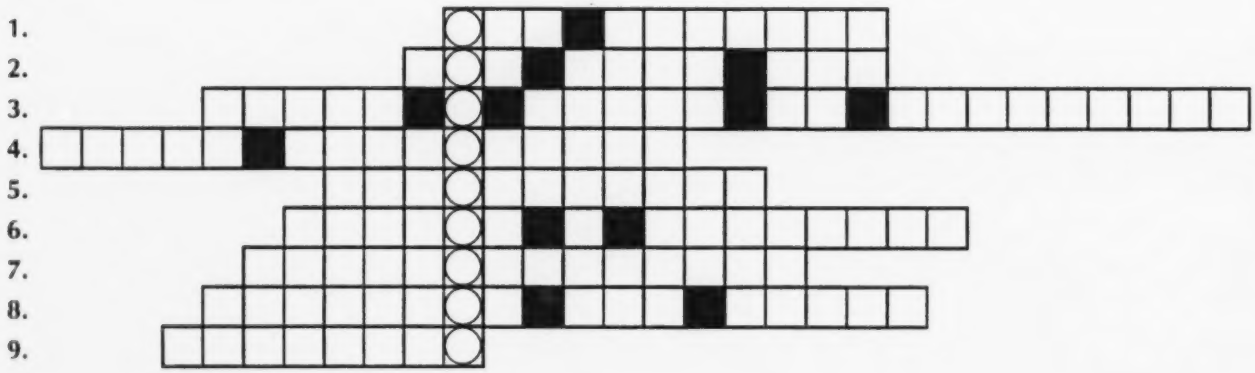
Activity Sheet

Write each term that is defined in the appropriate boxes. When you have finished, the letters in the circles running down will spell out a word that names a feature of the U.S. population.



1. The Fourteenth Amendment forbids the government from taking away a person's rights without _____ _____ of law. (2 words)
2. This kind of law requires the separation of the races. (3 words)
3. This landmark Supreme Court case upended the separate but equal rule. (4 words plus 1 abbreviation)
4. The Fourteenth Amendment guarantees that every person enjoys _____ _____ of the laws. (2 words)
5. The separation of the races is called _____. (1 word)
6. This landmark Supreme Court case established segregation as long as segregated facilities were equal. (2 words plus 1 abbreviation)
7. A law that does not violate the Constitution is said to be _____. (1 word)
8. This rule allowed for segregated facilities. (3 words)
9. A group that does not make up the majority of the population is a _____. (1 word)

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Diversity and the Law

Level C (Grades 9–12)

This level contains the following materials:

Lawyer's Pages

Make an overhead transparency of the time line for use with the class.

- ❑ **Lesson Plan** (page C-20)
- ❑ **Background on the Law** (page C-21)
- ❑ **U.S. Census: A Time Line** (page C-22)
- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages C-23–24)
- ❑ **Separate But Equal: A Future Look?** (page C-25)

Teacher's Pages

Make one copy of each page marked with the teacher's icon, and send to the teacher in a Teacher's Packet one week before the class session.

- ❑ **Background on the Law** (page C-21)
- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages C-23–24)
- ❑ **Separate But Equal: A Future Look?** (page C-25)
- ❑ **Activity Guide** (pages C-26–30)
  Overview of the Lesson
  Activity Sheet/Answer Key
  Extension Activities (Drafting a Proposed Bill, Student Forum)

Student Pages

Make copies of the pages marked with the student icon for each student in class, and distribute as part of a Student Packet.

- ❑ **Separate But Equal: A Historical Look at Segregation—Sections 1–5** (pages C-23–24)
- ❑ **Separate But Equal: A Future Look?** (page C-25)
- ❑ **Activity Sheet** (page C-31)

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Objectives

During your session, students will—

- ✓ interpret the trends toward increasing diversity in the U.S. population as well as awareness of this diversity
- ✓ identify court decisions and legislative acts that define the constitutionality of classifying students for enrollment in public schools
- ✓ identify arguments for and against the existence of group-exclusive public schools
- ✓ apply legal and political history in evaluating a mock bill seeking to remedy unequal educational opportunity

Vocabulary

As these terms come up in discussion, list them on the board and elicit definitions from the students. Guide them toward adequate definitions if necessary. Many of these terms are used on the Activity Sheet in the Student Packet, which students may complete after your visit.

Brown v. Board of Education of Topeka
constitutional
covenants
de jure
diversity
due process
equal protection
Jim Crow laws
minority
Plessy v. Ferguson
segregation
separate but equal

Procedure

Note: Before your class session, make an overhead transparency of the time line on page C-22. Arrange with the teacher to have an overhead projector in the classroom for your presentation.

1. Ask students to name ancestries represented in this country, and create a list of their responses on the board. After a minute or two, ask the class how many different ancestries they think there are in the U.S. population. After several guesses, point out that in the 1990 census, people could write in their ancestral origins, which were then assigned codes—and about 1,000 code numbers existed!

2. Display an overhead transparency of the time line of the U.S. Census on page C-22. (Before the class, acquaint yourself with the background document, "The Constitution, the Census, and Diversity" on page C-21. Use it to expand on the information given on the time line.) Give students the opportunity to examine the time line, and then ask what general trend they see (that not only has the diversity of the population increased but there is also an awareness of differing ethnic backgrounds). Note also the shift from third-party identification of ancestry to self-identification.

3. Ask students what effect they think the increasing diversity of the population—and people's attitudes toward diversity and their own heritage—have had on the country. After a few minutes of discussion, tell students that they are going to examine one institution that has been altered as the diversity of the nation has increased—public school education.

4. Distribute the Student Packets to the class.

5. Divide the class into four groups. Direct students to the handout "Separate But Equal: A Historical Look at Segregation" in their packets. Ask the members of each group to read the material, discuss it among themselves, and prepare to present a brief summary of each section to the entire class. (The students in each group may want to assign an individual member to read and summarize each one of the sections. Give the groups this option.) Allow about fifteen minutes for this activity.

6. In sequence, ask a member of each group to summarize for the rest of the class the information in one of the sections.

7. Summarize with the class the broad historical trend toward desegregation that is evidenced by the case summaries described in Sections 1–4. Write this summary on the board or on an overhead transparency.

8. Ask students to read Section 5 of the handout. Then discuss with them the fact that some people support a different form of segregation, one that would ensure equal educational opportunity by placing students in learning environments with students who are similar to them in order to help the students achieve academically. Thus, the argument goes, students would be more comfortable, teaching techniques that best meet their needs could be selected more easily, and school conflicts between students of different groups would be reduced.

9. Direct students to the handout "Separate But Equal: A Future Look?" in their packets. Allow them several minutes to read and reflect on it.

10. Give the student groups a few minutes to review their summary of desegregation and the mock proposed legislation. Ask the groups to discuss how they think the legal decisions they have learned about would apply to the mock proposed legislation. In other words, would the Supreme Court approve such a law?

11. Facilitate a class discussion based on the groups' analysis.

12. Conclude with a class vote (by a raise of hands) to tally how many students would and would not support the mock legislation themselves.

Jim Crow Laws

Jim Crow refers to practices, institutions, and statutes that result from or foster segregation of African Americans from white Americans. The term comes from an African-American character in a popular song from the 1830s, and it came into common use in the 1880s when racial segregation became legal in many parts of the South.

First developed in the northern states and later adopted by the South, *Jim Crow laws* refers to statutes that required racial separation in many public places. These included public schools; recreational, sleeping, and eating facilities; public vehicles; even telephone booths. Jim Crow laws also deprived African Americans of their voting rights.

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THE CONSTITUTION, THE CENSUS, AND DIVERSITY

As the United States has grown, the variety of people considered part of this nation has also grown. The population of the United States today is vastly different from the population of the original thirteen colonies, and the ways in which we chronicle and consider those various individual human beings has also changed radically.

Article I, Section II, of the U.S. Constitution requires a census to be conducted every ten years. When the Constitution was ratified, the law called for a count of "... free Persons ... excluding Indians not taxed, [and] three fifths of all other Persons."

In March 1790, after President George Washington signed the first census act, Secretary of State Thomas Jefferson instructed U.S. marshals throughout the nation to take the census. This count was intended to assist in apportioning federal taxation and representation. Marshals were instructed to observe the people from each household and then record their numbers using the following classifications:

1. free white males over sixteen years of age
2. free white males under sixteen
3. free white females
4. other persons
5. slaves

The U.S. Census has always included a question about race. Whites have always been distinguished from nonwhites. However, the census moved very slowly in creating classifications that would distinguish groups of nonwhites from one another. In 1850, instructions to census workers read: "In all cases where the person is white, leave the space blank; in all cases where the person is black, insert the letter B; if mulatto insert M. It is very desirable that these particulars be carefully regarded."

It wasn't until 1900 that three additional classifications were added: Chinese, Japanese, and Indian. The move to include Indians was not without some peculiar instructions: "Every family composed mainly of Indians should be reported *entirely* [as Indians], and every family composed mainly of persons not Indian should be reported *entirely* [in] the general population."

The census was moving toward a policy of considering a person's social affiliations in determining his or her race. Consider the instructions given to census takers in 1930: A person of mixed "White" and "Negro" blood was to be counted as a "Negro," no matter how small the percentage of African-American blood; someone part "Indian" and part "Negro" also was to be listed as "Negro," unless the Native-American blood predominated and the person was generally accepted as a Native American in the community. A person of mixed "White" and "Indian" blood was to be counted as an "Indian" unless regarded as white in the community. Let's not forget that it was the census taker who was making this determination, not the respondent.

In 1970, respondents were asked to self-identify their ethnicity. Responses clearly revealed that citizens did not place themselves into a few neat categories. Census workers, however, were given instructions for interpreting the wide variety of responses. For example, "Chicano," "La Raza," "Mexican American," "Moslem," or "Brown" were to be changed to "White," while "Brown (Negro)" would be considered as "Negro" or "Black" for census purposes.

In the most recent (1990) census, respondents were given the opportunity to write in their ancestry. In fact, each person enumerated in the census could list two ancestry identities. Census workers then assigned each listed ancestry a code number from a list of almost 1,000 ancestry codes. The codes ranged from 001 (Alsatian) to 994 (North American).

DEFINING THE EDUCATIONAL RIGHTS OF DIVERSE STUDENT GROUPS

The following laws and court rulings, as discussed in Section 4 of "Separate But Equal: A Historical Look at Segregation" on page C-24, have helped define the educational rights of identifiable groups of students:

Title IX, 1972: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education programs or activity receiving Federal financial assistance."

***San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973):** "Apart from the unsettled and disputed question whether the quality of education may be determined by the amount of money expended for it,...where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages."

***Brenden v. Independent School District 742*, 477 F.2d 1292 (1973):** "[D]iscrimination on the basis of sex can no longer be justified by reliance on 'outdated images'... of women as peculiarly delicate and impressionable creatures in need of protection from the rough and tumble of unvarnished humanity."

Education for All Handicapped Children Act, 1975 (since renamed Education of Individuals with Disabilities Act): "It is the purpose of this Act to assure that all children with disabilities have available to them...a free, appropriate public education which emphasizes special education and related services designed to meet their unique needs."

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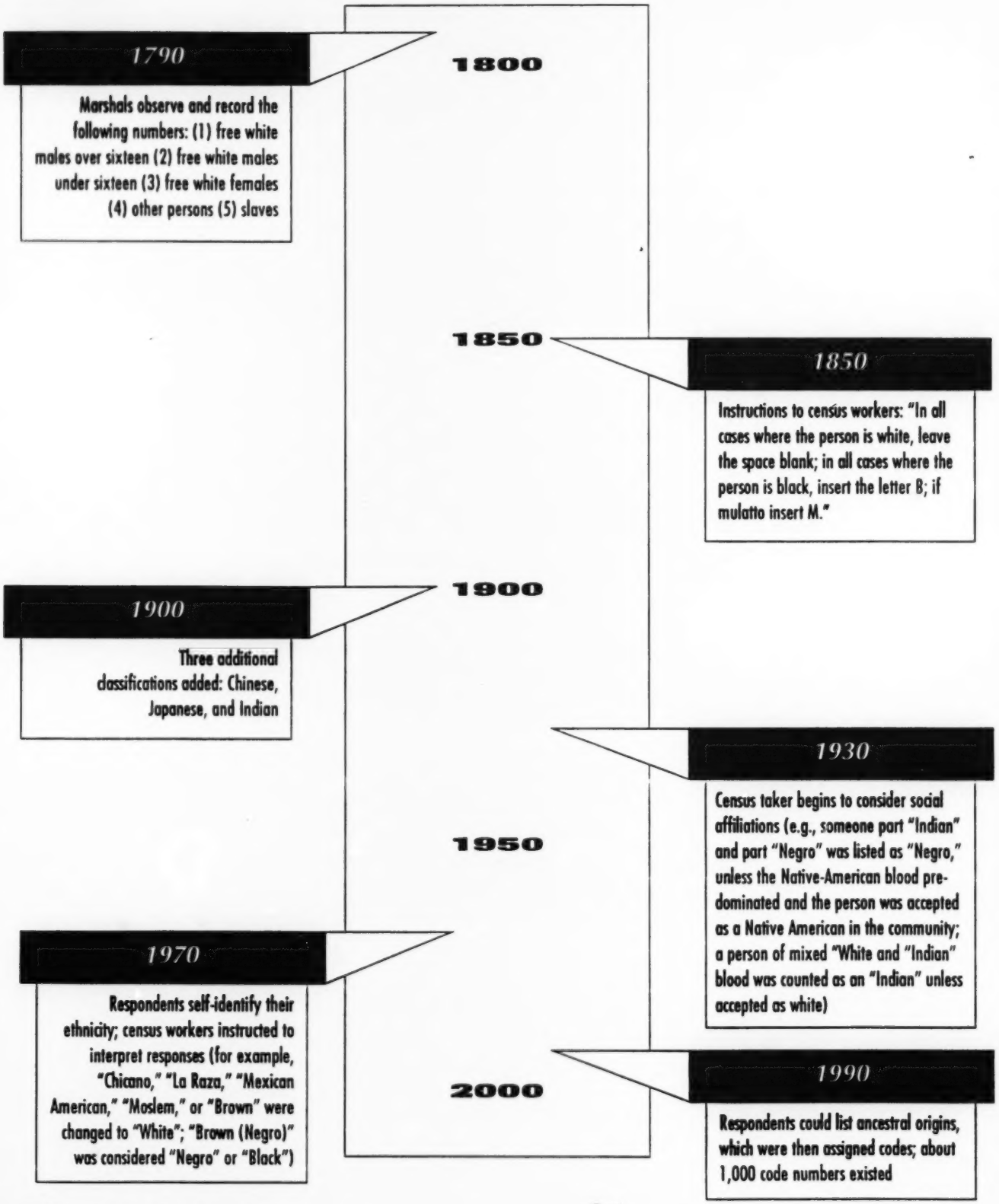
U.S. Census: A Time Line


1790
Marshals observe and record the following numbers: (1) free white males over sixteen (2) free white males under sixteen (3) free white females (4) other persons (5) slaves
1800
1850
1850
Instructions to census workers: "In all cases where the person is white, leave the space blank; in all cases where the person is black, insert the letter B; if mulatto insert M."
1900
1900
Three additional classifications added: Chinese, Japanese, and Indian
1930
Census taker begins to consider social affiliations (e.g., someone part "Indian" and part "Negro" was listed as "Negro," unless the Native-American blood predominated and the person was accepted as a Native American in the community; a person of mixed "White and "Indian" blood was counted as an "Indian" unless accepted as white)
1950
1970
Respondents self-identify their ethnicity; census workers instructed to interpret responses (for example, "Chicano," "La Raza," "Mexican American," "Moslem," or "Brown" were changed to "White"; "Brown (Negro)" was considered "Negro" or "Black")
2000
1990
Respondents could list ancestral origins, which were then assigned codes; about 1,000 code numbers existed

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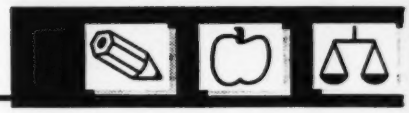
Separate But Equal:
A Historical Look at Segregation



Section 1

The Supreme Court case *Plessy v. Ferguson,* 163 U.S. 537 (1896), set the stage for a century-long debate about the legality and propriety of considering race when providing government services. In *Plessy,* the high court established the separate but equal doctrine when it ruled that the separation of races on public transportation did not violate the Fourteenth Amendment as long as equal facilities were provided for each of the segregated races. (The Fourteenth Amendment forbids any state from depriving "any person of life, liberty, or property, without due process of law" or denying "to any person within its jurisdiction the equal protection of the laws.")

Racial segregation, both in law and everyday practice, was well established at the time, and the majority of the Justices agreed that it created no stigma in and of itself. Indeed, the Court held that segregation was beneficial to both races. In a series of cases beginning in 1898, the Court extended the separate but equal rule to include public education. In fact, racially segregated schools predated segregated public transportation. Justice Brown cited this precedent in justifying the *Plessy* decision.

Although schools for African Americans were underfunded, poorly maintained, and located long distances from many black students' homes (white students were provided school buses; blacks were not), the courts routinely found the separate schools constitutional and in compliance with state statutes.

Section 2

Beginning in 1930, the National Association for the Advancement of Colored People (NAACP) brought suit in state and federal courts challenging racial segregation in public accommodations and education. Its goal was to abolish of the so-called Jim Crow laws, which called for such segregation, and to improve public education for African Americans. Time and again, however, the separate but equal doctrine established by the Supreme Court served to defeat the NAACP. Between 1938 and 1950, the force of the separate but equal doctrine was diluted only a little by decisions requiring "professional schools" at state universities in Missouri, Oklahoma, and Texas to desegregate.

It wasn't until World War II and its aftermath that the Supreme Court focused its attention on hardships imposed on racial minorities. In *Hirabayashi v. U.S.,* 320 U.S. 81 (1943); *Korematsu v. U.S.,* 323 U.S. 214 (1944); *Oyama v. California,* 332 U.S. 633 (1948); and *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948), the Court ruled that states could not impose special disabilities on people of Asian descent. Court action in racial matters expanded to reduce restrictions in housing, public accommodations, public education, and commerce. In 1946, for example, the Court ruled in *Morgan v. Virginia,* 328 U.S. 373, that a Virginia statute requiring racial segregation on interstate buses was unconstitutional because it imposed an undue burden on interstate commerce.

In 1948, the efforts of the NAACP were assisted when the U.S. attorney general became involved in the case *Shelley v. Kraemer,* 334 U.S. 1. In this case, the Court ruled that racially restrictive covenants were unconstitutional. Such covenants prohibited the sale of housing to people because of their racial or ethnic ancestry. The involvement of the nation's attorney general in a case involving race signaled a dramatic change in the political climate.

Section 3

The Supreme Court was chipping away at the well-entrenched separate but equal doctrine from 1930 to 1950. But it was not until 1954, when the Court issued its landmark opinion in *Brown v. Board of Education of Topeka,* 347 U.S. 483, that the legitimacy of the doctrine was dramatically upended.

Brown was brought to the Court by the Legal Defense and Education Fund of the NAACP. At the time the case was filed, the Court held petitions from numerous other states seeking hearings on the constitutionality of racially segregated public schools. Under the leadership of newly appointed Chief Justice Earl Warren, the Court consolidated several cases into one case that would affect millions of schoolchildren in over a dozen states.

Chief Justice Warren wrote the landmark opinion in *Brown.* In so doing, he purposely avoided the use of technical style and language and wrote an opinion that was short, clear, and nonaccusatory. He wrote that segregation and the doctrine of separate but equal were "inherently" unconstitutional. Asking and answering his own questions, Warren wrote: "Does segregation of children in public schools solely on the basis of race...deprive the children of the minori-

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ty group of equal educational opportunities? We believe that it does."

While Warren clearly linked the increased importance of education in American life and greater professional success in the African-American community, he equally clearly avoided tampering with applications of Jim Crow laws beyond segregated schools.

Section 4

The practice of excluding students from full and equal participation in public schools has not been limited to racial exclusion. Following the *Brown* decision, Congress as well as state and federal courts have been called upon to define the educational rights of other identifiable groups of students:

Sex: In the late 1960s and early 1970s, Congress examined the issue of sex discrimination in education and the unequal educational opportunities available to males and females. As a result, Congress enacted into law a federal statute, Title IX, that expressly prohibits discrimination on the basis of sex in education programs and activities receiving federal funding.

In the 1973 case *Brenden v. Independent School District 742,* 477 F.2d 1292, a federal court of appeals ruled that the equal protection clause of the Fourteenth Amendment is violated when a school neglects to provide noncontact sports teams for girls if it provides teams for boys in the same sports. The court did not rule on the lawfulness of separate but equal athletic programs for girls and boys or on the practice of barring girls from contact sports with boys.

The disadvantaged: The 1973 Supreme Court case *San Antonio School District v. Rodriguez,* 411 U.S. 1, reviewed school funding practices that resulted in wealthier districts providing better funded education for students than poorer districts. Parents of children in poor districts claimed that their children were the victims of discrimination because they received a lower quality of education. The U.S. Supreme Court ruled that wealth, unlike race or sex, is not a "suspect class" and does not require constitutional protection. The Court further ruled that education is not a fundamental right under the Constitution.

People with disabilities: In 1975, Congress enacted the Education for All Handicapped Children Act. The title of the act has since been changed to the Education of Individuals with Disabilities Act. The act is a congressional response to increasing awareness of the educational needs of disabled children, and it allocated federal funds to support this goal. Prior to this legislation, schools commonly excluded disabled children or provided them with woefully inadequate educational opportunities.

Section 5

The last century has seen a movement to uphold the rights of students from identified groups to be *included* in public educational systems. However, a limited movement also exists to create segregated schools for certain groups; such segregation is being promoted as beneficial to the students.

Most notable was the unsuccessful 1991 attempt of the Detroit public schools to create academies that would limit attendance to black males. Citing the crisis facing African-American males evidenced by high rates of homicide, unemployment, and dropping out of school, Detroit planned new schools that would both isolate and support this high-risk group.

In 1982, the Supreme Court held unconstitutional a single-sex admissions policy for a public university in Mississippi. Relying on the Court's reasoning in the Mississippi case, a Michigan federal district court determined that the Detroit school district failed to show that the exclusion of females from the academies would remedy high unemployment, dropout, and homicide rates among urban black males, or that the presence of female students is responsible for these failures. The Court found no compelling state interest in taking this unconventional action.

In a recent case, the Supreme Court rejected a plan to establish a school district to accommodate the special needs of disabled Hasidic Jewish children. In *Board of Education of Kiryas Joel Village School District v. Grumet,* 114 S. Ct. 2481 (1994), the Court ruled that the New York law establishing the district violated the First Amendment's Establishment Clause, which requires the separation of church and state.

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Separate But Equal: A Future Look?

Each of these scenarios has been suggested as evidence that, in certain situations, segregated public education may remedy problems and foster learning in the United States.

1. Today housing patterns in the United States are more segregated than ever before. Whole neighborhoods are populated almost entirely by African Americans, European Americans, Hispanics, or some other ethnic group. Therefore, many neighborhood schools are still segregated—not by law but by circumstance (that is, *de jure* segregation). One remedy for achieving school integration is busing. To accomplish integration, some students would have to spend hours each day on buses when they could be attending class or studying.

2. Educational and social science research shows that girls do better in math and science classes when there are no boys in the class to compete with them. If girls are to be adequately trained to compete professionally in math and science careers, they should be taught these subjects in all-girl classes.

3. Non-English-speaking students are sometimes taunted and ridiculed by English-speaking students in many schools. In order to allow these students to learn in an environment free from harassment, the students should attend their own schools.

4. Some students who are high achievers are not offered the chance to learn at the rate or level that they are capable of. Students who are very bright and excel in certain subjects should not be held back by being in classes with less capable students; they should be placed in special schools with adequate resources to challenge them fully.

5. Students of a religious minority dress distinctively because of their religion. They do not want to attend school with students who do not accept their religion and are intolerant of their style of clothing. The minority students feel that they have a right to attend a public school where their religious and moral standards are upheld and supported.

6. In many areas where Hispanic students are in the minority, dropout rates are very high for this group. Many Hispanic students say that the cultural discomfort they feel in school is the primary reason for their leaving the educational system. Schools that serve only Hispanic students have been suggested to remedy this problem.

Suppose that groups who promote a segregated approach to public schooling have offered this proposed law to their legislative representatives. Would you support it?

Henceforth, members of boards of education will be empowered to determine what type of school environment best suits the needs of their diverse students. To best serve the educational, cultural, religious, and social interests of their student body they may, by a simple majority vote, set policies that would place individual students in specific schools based on each student's needs. These needs will be determined by the student's race, ethnicity, religion, gender, and intelligence, as well as an assessment by a professional educator.

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OVERVIEW OF THE LESSON

Objectives

During the lawyer's class session, students will—

- ✓ interpret the trends toward increasing diversity in the U.S. population as well as awareness of this diversity
- ✓ identify court decisions and legislative acts that define the constitutionality of classifying students for enrollment in public schools
- ✓ identify arguments for and against the existence of group-exclusive public schools
- ✓ apply legal and political history in evaluating a mock bill that seeks to remedy unequal educational opportunity

Lesson Summary

The lesson conducted by the lawyer focuses on the legal dynamics of desegregation measures in the United States, specifically in public education, as well as recent attempts to resegregate schools under certain circumstances. As an introductory task, students interpret a time line of the U.S. Census to discover the increasing diversity of the population and our increasing emphasis on ethnic identity. Working in small groups, they then examine Supreme Court decisions that allow for greater inclusion and integration of identified groups in the public educational systems. Finally, the class investigates a move toward establishing schools that exclusively serve certain racial, gender, or religious groups in order to benefit these groups and evaluates the constitutionality of a mock proposed law with this goal.

Following the lawyer's lesson, you might have students draft their own mock proposed laws regarding segregated schools to best serve certain groups of students. Additionally, consider holding a Student Forum on constitutional protections of cultural diversity. These extension activities are explained in greater detail below.

ACTIVITY SHEET/ANSWER KEY

In the Student Packet is a puzzle activity that asks students to work with key vocabulary terms. Students may use the activity to strengthen vocabulary after the lawyer's visit. The correct answers follow.

1. constitutional
2. due process
3. *Brown v. Board of Education*
4. separate but equal
5. Jim Crow (law)
6. *Plessy v. Ferguson*
7. minority
8. segregation
9. equal protection

Scrambled word: diversity

EXTENSION ACTIVITIES

Drafting a Proposed Bill: Ask students to draft their own proposed legislation to address the issue of segregated schools to benefit certain groups. They can do so individually or in groups, and then debate the merits of their bills as lawmakers would do on the floor of the legislature.

Student Forum: The Student Forum is a student-organized open discussion of a legal issue. Your role is to provide copies of materials to the students and to serve as a consultant. The forum is expected to take from two to five class periods depending on the number of characters included and the amount of discussion involved. Copy and distribute forum pages C-27–29 to each student. You will need two copies of the ballot on page C-30 for each student.

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Student Forum

AMENDMENT 28: PROTECTING DIVERSITY

To the Student

This Student Forum is an opportunity for you to take charge of your own learning. The forum is similar to a town hall meeting in which people come together to discuss ideas and issues. In the forum, you will consider a proposed amendment to the U.S. Constitution. The amendment reads:

> All persons born or naturalized in the United States shall enjoy their government's commitment to the preservation and enhancement of cultural diversity. No state shall make or enforce any law that abridges the fundamental right of citizens of the United States to freely and proudly express their diversity. No rights or opportunities shall be denied based on such expression.
>
> Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

You will also examine your personal views on the subject.

Before the forum begins, you will complete a ballot to identify your attitudes about the proposed amendment. Following the forum, you will complete another ballot to determine whether and how your attitudes have changed.

How to Conduct a Forum

1. The class selects five students to serve on the forum panel.
2. All students complete the pre-forum ballot and submit it to the panel.
3. All students form groups to develop or adapt character sketches for the forum.
4. The class members identify community members that they would like to invite to participate in the forum. With the teacher's permission, panel members invite guest speakers to the forum.
5. The panel selects student volunteers to serve as facilitator and clerk. It also identifies the students chosen to role-play the characters.
6. The clerk schedules the presentations of the characters and the guest speakers.
7. The students conduct the forum.
8. The class members discuss what policies they would implement.
9. All students complete the post-forum ballot. The panel reviews, compares, and summarizes the results.

Getting Ready

To prepare for the forum, become familiar with the language used in the Bill of Rights and other amendments; observe how language is used to refer to people (First, Fourth, Fifth, Sixth, Fourteenth, and Fifteenth Amendments). Then, as a class, brainstorm viewpoints for and against the proposed amendment. The facilitator will chart the viewpoints on the board.

As a class, identify community members whom you would like to invite to participate in the forum. You might ask some professionals to testify at the forum; for example, a civil rights attorney, a school district diversity coordinator, an affirmative action administrator.

Organize into an even number of groups of up to five students. With your group, choose a viewpoint for which you will develop a character. Make sure that an even number of pro and con viewpoints are chosen by the groups.

Develop and write a character sketch to promote your viewpoint. These pages include sample character sketches. You may use or adapt these sketches or create your own. Your character sketch should include the character's name, a specific viewpoint on the proposed amendment, background information about the character that supports the viewpoint, and a request for a specific policy position to be adopted. After you have developed the character sketch, select a group member to play the character's role in the forum. Give a copy of your character sketch to the panel, and tell the panel who will role-play the character.

Student Roles

Panel

The panel organizes the forum. Members tally and review the results of the pre-forum and post-forum ballots. The panel invites community members to participate in the forum upon recommendations from the class. It reviews and selects characters to be included in the forum and selects student volunteers to serve as clerk and facilitator. The panel provides a list of student and guest participants to the clerk. During the forum, panel members serve as members of the audience.

Clerk

The clerk receives a list of characters and guest speakers from the panel. The clerk then schedules the speakers for the forum. She or he may organize the presentations so that, for example, each pro position is followed by a con position or all pro positions are presented first followed by all con positions. The clerk presents the schedule of speakers to the facilita-

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tor. During the forum, the clerk may wish to take notes.

Facilitator
The facilitator opens the forum with a statement of purpose, such as "to explore whether the U.S. Constitution should be amended to preserve and protect cultural diversity." The facilitator calls on speakers to present their arguments in a five-minute period. He or she times the presentations and encourages audience members to ask questions and participate in a discussion of the issues. The facilitator closes the forum.

Audience
The audience (students who have not assumed roles as clerk, facilitator, or characters) participates by listening to testimony, asking questions, and discussing the issues.

Characters
Characters have five minutes to testify about their experience, viewpoint, and recommendation. They are questioned by the audience and should answer consistently within their role.

Character 1 My name is Michael Tymkovich. I have studied the U.S. Constitution for many years, and I want to explain how our Constitution has been changed in the past to reflect our evolving respect for diverse peoples. It is time for us, once again, to revise this document to bring it into alignment with the character of this nation.

The drafters of the Constitution and Bill of Rights were very similar to one another. They were educated and Anglo-European, and they were all men. The only constitutional reference they made to people other than themselves is found in Article I, Section II:

"Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

It wasn't until after the Civil War that additional Amendments to the Constitution addressed, and attempted to remedy, injustices imposed on some groups. In 1868, for example, the Fourteenth Amendment was passed, and it changed the Constitution to read: *"Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, [excluding Indians not taxed]."* (Bracketed material was set aside by later amendment.) This and other amendments addressed problems specifically related to the states' limiting equal protection and due process rights. They did not address the rights of diverse groups of people, but the rights of individuals who were members of minority groups.

The U.S. population has changed significantly in the past century. We are no longer a melting pot but a nation of many diverse populations who are proud of, and want to protect and promote, their unique identities. It is time to once again amend the Constitution to institutionalize our support for the diversity that now characterizes our population.

Character 2 My name is Henry Chin, and I work for the U.S. Census Bureau. Therefore, I am well qualified to comment on the socioeconomic changes that we are witnessing in this nation. In 1990, the U.S. Census uncovered a wealth of data that demonstrate just how diverse a nation we have become and the disparities within which we live.

Many people will look at the proposed constitutional amendment and think about our changing ethnic and cultural diversity. From the census data, they can cite statistics that tell us that between 1980 and 1990, there was a 53 percent increase in the number of people who identified themselves as of Hispanic origin, and a 54 percent increase in those who identified themselves as Mexican. They can tell us that 15 percent of the students in the New York City public schools are not proficient in English. The students speak many different tongues—including 90,000 who speak primarily Spanish, 13,000 who speak Chinese, 7,000 who speak Haitian Creole, 5,000 who speak Russian, and 500 who speak Farsi.

And the 1990 census revealed many problems. We know that black teenagers are six times more likely than whites to be fatally shot by someone else, but half as likely to take their own lives with a gun. We know that, in the past decade, births to unmarried women soared about 75 percent. More households owned three vehicles than those that owned one vehicle; yet home ownership declined for the first time in 50 years, while crowding and poverty increased.

There is much more that we can learn from the census data. But the important point that I want to make is that amending the Constitution will change nothing. Respect for cultural diversity must come from the people themselves,

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and solutions to socioeconomic problems must come through legislation by our elected officials. Amending the Constitution will only hold out an empty promise to decent people who deserve better.

Character 3 My name is Sherman Free Soul. I am a member of an Iroquois Nation, and my ancestors inhabited this land long before the invasion by Europeans. I strive to live my life in a manner that is consistent with the values and traditions of my ancestors. The actions of the U.S. government make it more and more difficult for me to do so. My children attend schools where they do not learn about their culture and the role that our tribe played in the founding and development of this nation. For example, Benjamin Franklin sent a delegation to visit the Iroquois Nation to learn about our confederacy, and that information was used to help them write the U.S. Constitution. As you can see, our contributions have been great.

My children are growing up in an environment in which their culture is not respected. The United States creates an artificial boundary for my people. Many members of my tribe live in Canada, where their cultural heritage is respected and protected by law. The Canadian Charter of Rights and Freedoms, which is part of the Canadian Constitution, states: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." I think that it is time to amend the U.S. Constitution to include similar protection.

Character 4 My name is Martha Alexander, and I am a member of America for Americans. We are a national organization that provides educational programs to teach people about this nation's history and founding principles. America has provided a safe haven for people throughout the world at times when their own countries denied them freedom and safety. People have come to our shores to find a better life, one in which they can raise their families free of conflict. In the past 100 years, we have taken in people from every continent. All these people should stand ready to become Americans and forsake those nations and cultures that they abandoned.

America for Americans believes that the liberty, freedom, and resources that U.S. citizens enjoy should be reserved only for them. This is why we mobilized in California to support Proposition 187, which denies illegal aliens schooling, social service, and most medical care.

People who understand this nation's history know that this is the land of freedom, and will always be so. The same freedom and liberty are offered to every person who legally enters our country. There is no need to change the Constitution, which has served us well for over 200 years, as it already contains the necessary protection for persons of diverse cultures. Instead, we should be protecting U.S. citizens from obvious inequities, such as in California, where taxpayers are paying $2.4 billion a year to provide for 1.7 million illegal aliens.

Character 5 My name is Juanita Garcia, and I am a high school junior. At my school, only 7 percent of the students are Hispanic. There are only two Hispanic teachers out of a faculty of over 50. I am always aware of how different I am from the majority of students. I still have an accent and am uncomfortable speaking publicly. My parents do not attend school functions because they do not speak English well, and they do not look like the other students' parents. I am proud that I am still in school, and I plan to graduate. It is very important to my parents for me to receive a high school diploma because they never had a chance to do so. However, my high school has a dropout rate of more than 50 percent for Hispanic students. Anglo students drop out at a rate of only 6 percent. Many of our parents came to this country so that their children would have better opportunities than they did. But we do not really have the opportunity to receive a high school education if we always feel uncomfortable at school.

I believe that passage of the proposed constitutional amendment will send a message to everyone in the United States that my friends, family, and I are respected and valued as much as anyone else in this country. We are willing to work hard, and we are good citizens. We deserve the same respect and opportunities as everyone else.

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Respecting and Protecting Diversity: What Should the U.S. Government Do?

Circle the choice that best answers how you feel about the issue.

	strongly agree				strongly disagree
I believe all public schools should					
1. Make diversity-sensitivity training a graduation requirement.	1	2	3	4	5
2. Incorporate multicultural perspectives into the teaching of all classes.	1	2	3	4	5
3. Only hire teachers who have been trained to work with diverse populations.	1	2	3	4	5
4. Expel students who demonstrate intolerance for minority groups.	1	2	3	4	5
5. Maintain a library that provides resources about all cultures and life-styles.	1	2	3	4	5
6. Prohibit speech that is hostile to any minority group.	1	2	3	4	5
I believe all law-making bodies should					
7. Include a diversity clause in every bill that is passed, just as we include safety or budget clauses now.	1	2	3	4	5
8. Allocate funds to equally serve diverse ethnic, racial, and life-style groups.	1	2	3	4	5
9. Enhance punishment for bigotry-based criminal behavior.	1	2	3	4	5
10. Require diversity-sensitivity training for all elected officials before they take office.	1	2	3	4	5
I believe justice system agencies should					
11. Be required to hire staff proficient in the languages spoken by the populations served.	1	2	3	4	5
12. Broaden the jury selection process to insure greater diversity in jury pools.	1	2	3	4	5
13. Require diversity-sensitivity training for all staff.	1	2	3	4	5
14. Dismiss personnel who violate diversity-sensitivity standards.	1	2	3	4	5
15. Provide documents and literature to the public in each language read by the populations served.	1	2	3	4	5

Complete the sentences below based on your personal opinion.

16. The most useful and effective measure that the government can take to promote multicultural unity in schools is to

_____

17. Lawmakers will best serve the interests of all cultural groups if they would

_____

18. The most valuable thing that the justice system agencies can do to enhance equal treatment and respect for all cultural groups is to

_____

Know These Terms

Constitutional amendment Constitutional amendments may be proposed by a two-thirds vote of each house of Congress or by a national convention called by Congress at the request of two-thirds of the states. To become part of the Constitution, amendments must be ratified, or approved, by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.

Due process This basic legal principle, which appears in the Fifth and Fourteenth Amendments, requires the government to be fair in its dealings with people. The amendments forbid federal, state, and local governments from depriving people of "life, liberty, or property, without due process of law."

Equal protection under law This phrase from the Fourteenth Amendment means that no person or class of persons may be denied the same protection of the laws that is enjoyed by other persons in similar circumstances.

Fundamental right This is a right explicitly or implicitly guaranteed by the Constitution.

Naturalized citizen of the United States This person has completed the process of acquiring U.S. citizenship and so has become entitled to all privileges of citizenship.

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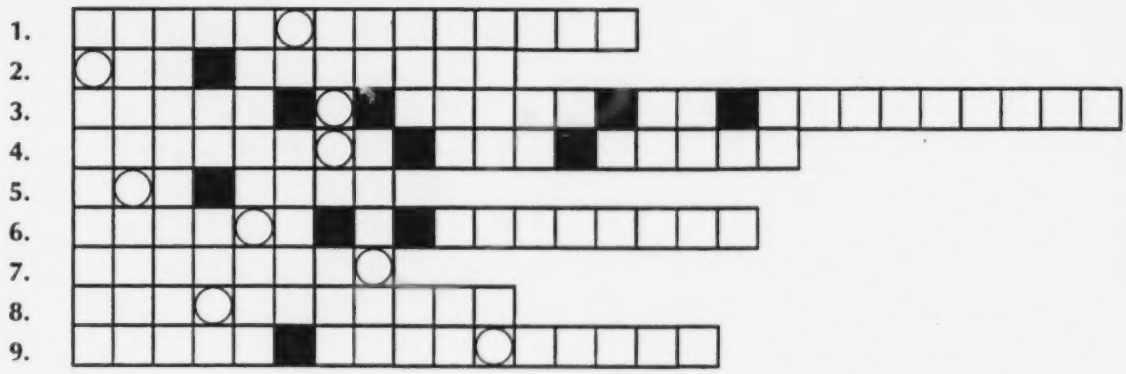
Activity Sheet

Write each term that is defined in the appropriate boxes. When you have finished, unscramble the letters in the circles to spell out a word that names a feature of the U.S. population.



1. A law that does not violate the Constitution is said to be _____.
2. The Fourteenth Amendment forbids a state from depriving a person of life, liberty, or property without _____ _____ of law.
3. This landmark Supreme Court case upended the separate but equal doctrine.
4. This doctrine allowed for segregated facilities.
5. This kind of law requires segregation.
6. This landmark Supreme Court case established segregation as long as segregated facilities were equal.
7. A group that does not make up the majority of the population is a _____.
8. The separation of the races is called _____.
9. The Fourteenth Amendment forbids a state from denying "to any person within its jurisdiction the _____ _____ of the laws."

Write the circled letters here: _____

Unscrambled: _____

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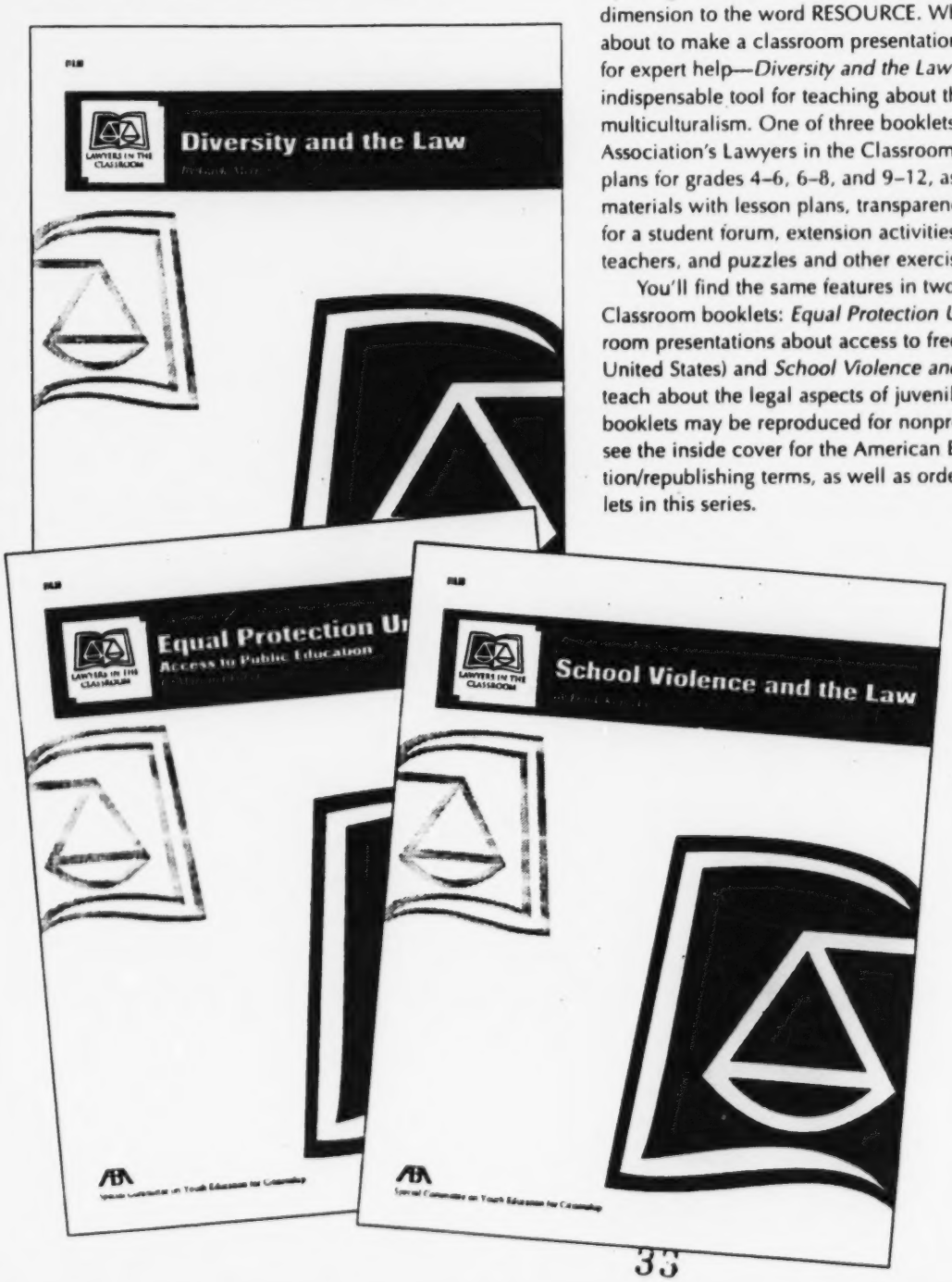
Diversity and the Law


Diversity and the Law
LAWYERS IN THE CLASSROOM
Equal Protection U
Access to Public Education
School Violence and the Law

One of Three Indispensable LRE Tools

By using this booklet in your classroom, you're adding a new dimension to the word RESOURCE. Whether you're a lawyer about to make a classroom presentation—or a teacher looking for expert help—*Diversity and the Law* will prove to be an indispensable tool for teaching about the legal dimensions of multiculturalism. One of three booklets in the American Bar Association's Lawyers in the Classroom series, it contains lesson plans for grades 4–6, 6–8, and 9–12, as well as background materials with lesson plans, transparency masters, instructions for a student forum, extension activities to leave behind with teachers, and puzzles and other exercises for students.

You'll find the same features in two additional Lawyers in the Classroom booklets: *Equal Protection Under Law* (featuring classroom presentations about access to free public education in the United States) and *School Violence and the Law* (which helps teach about the legal aspects of juvenile violence). All three booklets may be reproduced for nonprofit educational purposes; see the inside cover for the American Bar Association's reproduction/republishing terms, as well as ordering information for booklets in this series.

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